

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

CONSOLIDATED

“Amy” and “Vicky”,

Plaintiffs,

v.

Joshua Osmun Kennedy,

Defendant.

LEAD CASE NO. C13-17 RAJ

MEMBER CASE NO. C13-762 RAJ

DECLARATION OF JENNIFER
FREEMAN

NOTE ON MOTION CALENDAR:

August 22, 2014

WITHOUT ORAL ARGUMENT

Jennifer Freeman hereby declares the following to be true and correct under
penalty of perjury:

1. My firm Freeman Lewis LLP is co-counsel to Plaintiff “Amy” in this
action (“Amy” or “Plaintiff”) along with the Marsh Law Firm and the Law Office

Declaration of Jennifer Freeman in Support of
Plaintiffs’ Motion for Leave to Extend Time to
File Their Motion to Compel - 1

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1 of Jo-Hanna Read. I am an attorney admitted to practice in the State of New York
2 and a partner in Freeman Lewis LLP. I am admitted *pro hac vice* in this case.

3 2. I submit this Declaration in support of Amy's and co-Plaintiff
4 "Vicky"'s motion for leave to extend the time to note their motion to compel
5 discovery.

6 **The Early Proceedings in this Case, including Transfer to this Court,**
7 **Denial of a Stay, and Issuance of Prejudgment Attachments**
8

9 3. On January 4, 2013, Amy commenced this action seeking civil
10 damages against Kennedy under 18 U.S.C. § 2255 ("Masha's Law") and 18 U.S.C.
11 § 2252A(f) predicated on his possession of images of Amy being raped as a young
12 girl. (Docket #1). Vicky subsequently commenced a similar action, and both
13 Plaintiffs moved for prejudgment attachment. *See* Docket ## 60/68, 2014 WL
14 793365 (W.D.Wa. February 25, 2014). On June 7, 2013, the cases were
15 transferred from Judge Robarts to this Court (Docket #48), and on October 8,
16 2013, this Court consolidated them (Docket # 52) and issued a Minute Order
17 asking the parties whether the case should be stayed pending the Supreme Court's
18 decision in *Paroline* (Docket # 53). On November 1, 2013, amended by decision
19 on February 25, 2014, this Court granted Plaintiffs' motions for prejudgment

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1 attachment and declined to stay these proceedings. Docket ## 60/68, 2014 WL
2 793365 (W.D.Wa. February 25, 2014).

3 4. On March 7, 2014, I received a summary (the “Summary”) of the
4 Court’s Minute Scheduling Order (the “Scheduling Order”) on the Docket which
5 noted the discovery deadline of July 7. The Summary, attached as Exhibit A, did
6 not state a date for the filing of discovery motions different than set forth in LCR
7 16(b)(2).

8 5. The Scheduling Order, to which the Summary referred, set various
9 deadlines, including the date by which discovery motions had to be filed.

10 **The Motion to Compel Was Filed on July 7, the Discovery Deadline,**
11 **under a Good Faith, but Erroneous, Belief that It was Timely**
12

13 6. Plaintiffs filed their two motions to compel simultaneously on July 7,
14 which was the discovery deadline. LCR 16(b)(2) provides that “Any motion to
15 compel discovery shall also be filed and served on or before this deadline or as
16 directed by court order.” This was consistent with the Summary of the Court’s
17 Scheduling Order which noted the discovery deadline of July 7. The Summary did
18 not state a date for the filing of discovery motions different than set forth in LCR
19 16(b)(2).

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1 7. However, the Court’s Scheduling Order, annexed as Exhibit B,
2 diverged from the general local rule, requiring that discovery motions be “noted on
3 the motion calendar no later than the Friday before discovery closes pursuant to
4 LCR 7(d)(3).” Since the discovery deadline was July 7, the Court’s Scheduling
5 Order required discovery motions to be noted by Friday, July 4, the Friday before
6 the deadline, which would have required filing the motions to compel by June 19.

7 8. Plaintiffs’ counsel concededly erred in relying on LCR 16(b)(2) and
8 the Summary, and failing to note the Scheduling Order’s divergence from the local
9 rule. Thus, the motions were filed late in a good faith, but erroneous, belief that
10 they were being timely filed.

11 **If Filed on June 19, the Motions Would Have Been Premature Because**
12 **of Defendant’s Delays in Responding to Discovery and Sitting for a**
13 **Deposition.**
14

15 9. As detailed below, Defendant Kennedy delayed responding to
16 document demands and interrogatories for six months, and delayed appearing for
17 his deposition for several weeks.

18 10. On January 4, 2014, Plaintiff Amy served document demands and
19 interrogatories.

1 11. On January 21, 2014, Defendant Kennedy sent a letter to Plaintiffs
2 making his first offer of settlement. At the end of the letter, he asked that the
3 parties agree to “temporarily” delay his compliance with his discovery obligations
4 pending settlement discussions: “We have now received discovery requests on
5 behalf of plaintiff Amy. Therefore, if you wish to discuss this matter further, we
6 would ask that counsel for ‘Amy’ agree to at least temporarily extend the deadline
7 to respond to this discovery to allow time for the parties to explore the possibility
8 of settlement. Please advise.”¹

9 12. Plaintiffs agreed to an extension of time until February 19, 2014 for
10 Defendant Kennedy’s discovery responses.

11 13. On February 19, 2014, Defendant served boilerplate objections, and
12 did not produce any documents or answer any interrogatories. Kennedy’s
13 Objections to Plaintiff’s Document Request and Interrogatories are annexed as
14 Exhibits C and D, respectively.

15 14. By late March, with no settlement reached, Plaintiffs declined to delay
16 discovery any longer.

¹ Plaintiff Amy has not attached this letter as an exhibit since it contains a settlement offer.

1 15. On or about April 14, 2014, Plaintiff Amy served *subpoenae duces*
2 *tecum* on Defendant's criminal defense counsel, Suzanne Elliott and Gilbert Levy
3 respectively, seeking at least some of the documents which Kennedy had not
4 produced. A copy of those subpoenae are annexed as Exhibits E and F.

5 16. On May 15, 2014, Ms. Elliott served a general objection to the
6 subpoena and a Memorandum in support of objection to subpoena, but produced
7 no documents. A copy of her objection is attached as Exhibit G.

8 17. On May 16, 2014, Mr. Levy served general objections to the
9 subpoena, but produced no documents. A copy of his objection is annexed as
10 Exhibit H.

11 18. As detailed in the accompanying Declaration of Carol Hepburn, on or
12 about May 27, 2014, counsel for Vicky sought to depose Kennedy. Kennedy
13 repeatedly asked for and was granted postponements of his deposition, not
14 appearing until June 27.

15 19. On June 2, 2014, my partner Robert Y. Lewis and I sent a letter to
16 defense counsel for Kennedy in both the civil and criminal cases, detailing
17 deficiencies in their various objections and seeking production of documents,
18 answers to interrogatories, and privilege logs. A copy of that letter is attached as

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1 Exhibit I. We offered several dates for a “meet and confer” call to attempt to
2 resolve these issues, the last of which was June 9, the date chosen by Kennedy’s
3 counsel.

4 20. On June 9, 2014, counsel for Plaintiff Amy, Plaintiff Vicky,
5 Defendant Kennedy in the civil case (Kenneth Hart), and Defendant Kennedy in
6 the criminal case (Ms. Elliott, and Mr. Levy) participated in a Rule 27 “meet and
7 confer” teleconference. Some but not all disputes were resolved.

8 21. On June 20, 2014, Kennedy produced his first documents responsive
9 to the document demands, first answers to the interrogatories, and first specific,
10 non-boilerplate objections to the requests. Plaintiffs found these responses to be
11 deficient and that point realized that we would need to move to compel.

12 22. Plaintiffs filed their motions to compel on July 7, the last date on
13 which Plaintiffs thought motions to compel would be timely.

14 23. Plaintiffs noted the motion for July 25, and to accommodate Ms.
15 Elliot, the motion was re-noted for August 15.

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**The Requested Extension of Time to Note the Motion to Compel Will
Not Delay the Case or Prejudice the Defendant**

24. No Scheduling Order deadlines have heretofore been adjourned or extended and the requested three-week extension of time will not cause any of the other deadlines in the scheduling order to be extended.²

25. The Scheduling Order provides for motions *in limine* to be filed by October 6, the pretrial order by October 20, and pretrial briefs, proposed jury instructions, etc. on October 27, and trial on November 3, 2014. The adjourned date of July 25 is more than two months before motions *in limine* are due and three-months before trial.

26. Kennedy has not alleged any prejudice to him from the filing of the motion to compel on July 7 rather than June 19, and I am not aware of any.

27. I am over the age of eighteen, am competent to testify in this matter, and make this Declaration upon personal knowledge. The facts recited herein are true and correct to the best of my knowledge under the laws of perjury of the State of Washington.

² On August 5, Plaintiffs filed a motion for summary judgment on the date set by the Scheduling Order for filing dispositive motions. Plaintiffs are not asking that a decision on that motion be delayed pending a decision on their motion to compel.

1 WHEREFORE, Plaintiff Amy requests that this Court grant Plaintiffs' motion to
2 extend the time in which to move to compel to August 15, 2014.

3 Dated: August 14, 2014

4 /s/

5 _____
6 Jennifer Freeman

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